

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Dahmen *et al.*

Appl. No.: 10/565,883

§ 371(c) Date: May 24, 2006

For: **Fungicide Ternary Active  
Ingredient Combinations**

Confirmation No.: 8057

Art Unit: 1612

Examiner: HOLLOMAN, Nannette

Atty. Docket: 2400.0180000/RWE/L-Z

**Reply to Restriction Requirement**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated October 3, 2008, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1 and 2. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made with traverse.

The claims of Group I are directed to a fungicidal composition, the claims of Group II are directed to a method of controlling fungi by using the fungicidal composition, and the claim of Group IV is directed to a process for preparing the fungicidal composition. Therefore, the claims of Groups I, II, and IV are related as products, process adapted for manufacturing such products, and a process of using such products, respectively. Section 1.475 (b)(3) of Title 37 of the Code of Federal Regulations states that a national stage application containing claims to a product, a process specially adapted for the manufacture of the said product, and a use of the said

product will be considered to have unity of invention. Examining these three groups together would therefore not place an undue burden on the Examiner.

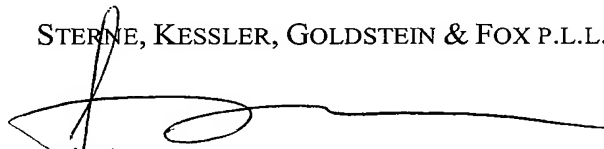
Furthermore, the Examiner has mischaracterized the technical feature of the claim (claim 5) of Group III. Claim 5 of Group III is directed to a propagation material treated by the fungicidal composition of the claims of Group I. Therefore, claim 5 is directed to a use of the fungicidal composition. Accordingly, claim 5 should be placed in Group II and should be examined along with the claims of Group II.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Lei Zhou

Attorney for Applicants  
Registration No. 48,291

Date: Nov 25, 2008

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600

906572\_1.DOC

Atty. Dkt. No. 2400.0180000/RWE/L-Z